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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,042	07/09/2003	Alonzo C. Aylsworth	2230-00100	4840
23505	7590	02/07/2006		
CONLEY ROSE, P.C. P. O. BOX 3267 HOUSTON, TX 77253-3267			EXAMINER LEWIS, AARON J	
			ART UNIT 3743	PAPER NUMBER

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/616,042	AYLSWORTH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	AARON J. LEWIS	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11/16/2005 (AMENDMENT).
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 6-16,19-53 and 55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 6-16,19-31 and 35-53 is/are allowed.
- 6) Claim(s) 32,33 and 55 is/are rejected.
- 7) Claim(s) 34 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Allowable Subject Matter***

1. Claims 6-16,19-31,35-53 are allowed.
2. Claim 34 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 32 is rejected under 35 U.S.C. 102(b) as being anticipated by McDonald, Jr. ('222).

As to claim 32, McDonald, Jr. (col.3, lines 49-52 in the case of a pressure sensitive elements) as discussed above with respect to claim 6 also discloses a differential pressure measurement device having first and second ports (24,25) and an indicator (14) coupled to the differential pressure measurement device, and wherein the indicator displays an indication of a difference in air pressure associated with airflow in each of the first and second nostrils. McDonald, Jr. (col.7, lines 35-40) discloses the production of separate outputs indicative of the respiration sensed by the individual ones of the sensor elements. In the event that the sensed flow from one sensor is not equal to the

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other, monitor 14 will produce different separate outputs. Thus it is inherent that a difference between the first and second measured airflows is indicated.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald, Jr. ('222).

As to claim 33, McDonald, Jr. discloses a display device (14). While McDonald, Jr. is silent as to the particular configuration of the displayed information, it is submitted that the manner or configuration of displayed information can be arrived at through mere routine obvious experimentation and observation with no criticality seen in any particular configuration including one having graphical information or one having difference information. Inasmuch as the display device (14) of McDonald, Jr. is disclosed as being "constructed" (e.g. programmed either hard wired or with software) to interpret sensed information (col.7, lines 8-11), it is fully capable of providing the recited function of displaying information graphically as well as displaying difference information.

7. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald, Jr. ('222) in view of Derrick ('491).

The difference between McDonald, Jr. and claim 55 is measuring the airflow through a sensing tube of a bifurcated nasal cannula worn by a patient. As to the substantially

simultaneous measurement of airflow in each of the first and second nostrils, McDonald, Jr. (col.7, lines 35-40) discloses simultaneous measurement of airflow through each nostril and the production of separate outputs indicative of the respiration sensed by individual ones of the sensor elements for the purpose of monitoring an individual's respiration more closely.

Derrick, in a method for measuring nasal and oral airflows, teaches measuring the airflow through a sensing tube of a bifurcated nasal cannula worn by a patient (figs.1 and 2) for the purpose of providing such a patient with breathable gases while analyzing respired gases (col.4, lines 8-9) in order to permit constant monitoring of patient breathing thereby enabling prompt effective detection of apnea, choking and regurgitation of such a patient (col.5, lines 11-20).

It would have been obvious to modify McDonald, Jr. to measure nasal airflows through a bifurcated nasal cannula because it would have provided breathable gases to a patient while analyzing respired gases in order to permit constant monitoring of patient breathing thereby enabling prompt effective detection of apnea, choking and regurgitation of such a patient as taught by Derrick.

#### ***Response to Arguments***

8. Applicant's arguments filed 11/16/2005 have been fully considered but they are not persuasive. Applicant's arguments regarding claim 32 are not persuasive because McDonald, Jr. (col.7, lines 35-40) discloses the production of separate outputs indicative of the respiration sensed by individual ones of the sensor elements for the purpose of monitoring an individual's respiration more closely; therefore, the indicator (14) displays

an indication of a difference in air pressure associated with airflow in each of the first and second nostrils.

Applicant's arguments regarding claim 55 are not persuasive because the combination of McDonald, Jr. as modified by Derrick teaches substantially simultaneously measuring the airflow through each nostril and the production of separate outputs indicative of the respiration of individual ones of the sensor elements (col.7, lines 35-40 of McDonald, Jr.).

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (571) 272-4795. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



AARON J. LEWIS  
Primary Examiner  
Art Unit 3743

Aaron J. Lewis  
February 04, 2006